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BRE Westgate Property Owner LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Ahmed Al-kubaisi,

Plaintiff,

v.

**BRE Westgate Property
Owner LLC; And DOES 1-10,**

Defendant.

Case No.: **3:25-cv-02968-TSH**

ANSWER TO COMPLAINT

[Demand for Jury Trial]

Defendant BRE Westgate Property Owner LLC; ("Defendant") by and through the undersigned attorney hereby submit the following Answer to the Complaint of Plaintiff, Ahmed Al-kubaisi, filed March 31, 2025 ("Complaint"), and states as follows:

I. PARTIES

1. As to paragraph 1, Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same.

2. As to paragraph 2, Defendant admits it owns the real property, but denies the remaining allegations.

1 to form a belief as to the truth of these allegations and therefore denies the same.

2 14. As to paragraph 14, Defendant is without knowledge or information sufficient
3 to form a belief as to the truth of these allegations and therefore denies the same.

4 15. As to paragraph 15, Defendant is without knowledge or information sufficient
5 to form a belief as to the truth of these allegations and therefore denies the same.

6 16. As to paragraph 16, Defendant admits parking is provided.

7 17. As to paragraph 17, Defendant responds that this paragraph contains
8 purported recitations and conclusions of law that require no response, but to the extent that
9 a response may be required, Defendant denies the allegations of this paragraph of the
10 Complaint.

11 18. As to paragraph 18, Defendant denies the allegations of this paragraph of the
12 Complaint.

13 19. As to paragraph 19, Defendant responds that this paragraph contains
14 purported recitations and conclusions of law that require no response, but to the extent that
15 a response may be required, Defendant denies the allegations of this paragraph of the
16 Complaint.

17 20. As to paragraph 20, Defendant denies the allegations of this paragraph of the
18 Complaint.

19 21. As to paragraph 21, Defendant responds that this paragraph is an averment to
20 which no response is required, but to the extent that one may be required, Defendant denies
21 the allegations of this paragraph of the Complaint.

22 22. As to paragraph 22, Defendant denies the allegations of this paragraph of the
23 Complaint.

24 23. As to paragraph 23, Defendant denies the allegations of this paragraph of the
25 Complaint.

26 24. As to paragraph 24, Defendant denies the allegations of this paragraph of the
27 Complaint.

1 25. As to paragraph 25, Defendant denies the allegations of this paragraph of the
2 Complaint.

3 26. As to paragraph 26, Defendant denies the allegations of this paragraph of the
4 Complaint.

5 27. As to paragraph 27, Defendant responds that this paragraph is an averment to
6 which no response is required, but to the extent that one may be required, Defendant denies
7 the allegations of this paragraph of the Complaint.

8 28. As to paragraph 28, Defendant is without knowledge or information sufficient
9 to form a belief as to the truth of these allegations and therefore denies the same.

10 29. As to paragraph 29, Defendant is without knowledge or information sufficient
11 to form a belief as to the truth of these allegations and therefore denies the same.

12 30. As to paragraph 30, Defendant is without knowledge or information sufficient
13 to form a belief as to the truth of these allegations and therefore denies the same.

14 31. As to paragraph 31, Defendant denies the allegations of this paragraph of the
15 Complaint.

16 32. As to paragraph 32, Defendant denies the allegations of this paragraph of the
17 Complaint.

18 33. As to paragraph 33, Defendant denies the allegations of this paragraph of the
19 Complaint.

20 34. As to paragraph 34, Defendant responds that this paragraph contains
21 purported recitations and conclusions of law that require no response, but to the extent that
22 a response may be required, Defendant denies the allegations of this paragraph of the
23 Complaint.

24 35. As to paragraph 35, Defendant denies the allegations of this paragraph of the
25 Complaint, since the alterations allegedly sought are not clearly identified in the Complaint.

26 36. As to paragraph 36, Defendant denies the allegations of this paragraph of the
27 Complaint.

1 37. As to paragraph 37, Defendant denies the allegations of this paragraph of the
2 Complaint.

3 38. As to paragraph 38, Defendant responds that this paragraph contains
4 purported recitations and conclusions of law that require no response, but to the extent that
5 a response may be required, Defendant denies the allegations of this paragraph of the
6 Complaint.

7 **FIRST CLAIM FOR RELIEF**

8 39. As to paragraph 39, Defendant hereby incorporates the previous paragraphs
9 as if they had been fully stated herein.

10 40. As to paragraph 40, Defendant responds that this paragraph contains
11 purported recitations and conclusions of law that require no response, but to the extent that
12 a response may be required, Defendant denies the allegations of this paragraph of the
13 Complaint.

14 41. As to paragraph 41, Defendant responds that this paragraph contains
15 purported recitations and conclusions of law that require no response, but to the extent that
16 a response may be required, Defendant denies the allegations of this paragraph of the
17 Complaint.

18 42. As to paragraph 42, Defendant responds that this paragraph contains
19 purported recitations and conclusions of law that require no response, but to the extent that
20 a response may be required, Defendant denies the allegations of this paragraph of the
21 Complaint.

22 43. As to paragraph 43, Defendant responds that this paragraph contains
23 purported recitations and conclusions of law that require no response, but to the extent that
24 a response may be required, Defendant denies the allegations of this paragraph of the
25 Complaint.

26 44. As to paragraph 44, Defendant responds that this paragraph contains
27 purported recitations and conclusions of law that require no response, but to the extent that

1 a response may be required, Defendant denies the allegations of this paragraph of the
2 Complaint.

3 45. As to paragraph 45, Defendant is without knowledge or information sufficient
4 to form a belief as to the truth of these allegations and therefore denies the same.

5 46. As to paragraph 46, Defendant is without knowledge or information sufficient
6 to form a belief as to the truth of these allegations and therefore denies the same.

7 47. As to paragraph 47, Defendant is without knowledge or information sufficient
8 to form a belief as to the truth of these allegations and therefore denies the same.

9 48. As to paragraph 48, Defendant is without knowledge or information sufficient
10 to form a belief as to the truth of these allegations and therefore denies the same.

11 49. As to paragraph 49, Defendant is without knowledge or information sufficient
12 to form a belief as to the truth of these allegations and therefore denies the same.

13 50. As to paragraph 50, Defendant responds that this paragraph contains
14 purported recitations and conclusions of law that require no response, but to the extent that
15 a response may be required, Defendant denies the allegations of this paragraph of the
16 Complaint.

17 **SECOND CLAIM FOR RELIEF**

18 51. As to paragraph 51, Defendant hereby incorporates the previous paragraphs
19 as if they had been fully stated herein.

20 52. As to paragraph 52, Defendant responds that this paragraph contains
21 purported recitations and conclusions of law that require no response, but to the extent that
22 a response may be required, Defendant denies the allegations of this paragraph of the
23 Complaint.

24 53. As to paragraph 53, Defendant responds that this paragraph contains
25 purported recitations and conclusions of law that require no response, but to the extent that
26 a response may be required, Defendant denies the allegations of this paragraph of the
27 Complaint.

1 54. As to paragraph 54, Defendant responds that this paragraph contains
2 purported recitations and conclusions of law that require no response, but to the extent that
3 a response may be required, Defendant denies the allegations of this paragraph of the
4 Complaint.

5 55. As to paragraph 55, Defendant responds that this paragraph contains
6 purported recitations and conclusions of law that require no response, but to the extent that
7 a response may be required, Defendant denies the allegations of this paragraph of the
8 Complaint.

9 56. As to paragraph 56, Defendant responds that this paragraph contains
10 purported recitations and conclusions of law that require no response, but to the extent that
11 a response may be required, Defendant denies the allegations of this paragraph of the
12 Complaint.

13 57. As to paragraph 57, Defendant responds that this paragraph contains
14 purported recitations and conclusions of law that require no response, but to the extent that
15 a response may be required, Defendant denies the allegations of this paragraph of the
16 Complaint.

17 58. As to paragraph 58, Defendant is without knowledge or information sufficient
18 to form a belief as to the truth of these allegations and therefore denies the same

19 59. As to paragraph 59, Defendant is without knowledge or information sufficient
20 to form a belief as to the truth of these allegations and therefore denies the same.

21 60. As to paragraph 60, Defendant is without knowledge or information sufficient
22 to form a belief as to the truth of these allegations and therefore denies the same

23 **DEFENSES**

24 Defendant hereby asserts the following defenses to Plaintiff's claims for relief:

25 **FIRST AFFIRMATIVE DEFENSE**

26 (Failure to State a Claim)

27 The Complaint, and each and every claim therein, fails to state a claim for which relief

1 can be granted and should, therefore, be dismissed.

2 **SECOND AFFIRMATIVE DEFENSE**

3 (Unclean Hands)

4 Defendant alleges on information and belief that Plaintiff is barred from seeking relief
5 by the doctrine of unclean hands because Plaintiff sought out Defendant's business for the
6 sole purpose of filing a suit for monetary gain and not to avail himself of Defendant's goods
7 or services.

8 **THIRD AFFIRMATIVE DEFENSE**

9 (Lack of Standing)

10 Defendant alleges on information and belief that Plaintiff lacks standing in that the
11 alleged barriers do not impact his disability, and any alleged barriers have or will be remedied.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 (Statute of Limitations)

14 The purported barriers provide effective access to Plaintiff. Even if the features alleged
15 in the Complaint did not comply with applicable access standards, the features nonetheless
16 provided effective access to Plaintiff because any alleged noncompliance was de minimis,
17 the features were usable and accessible despite their alleged noncompliance, and/or Plaintiff
18 was able to use and access the features.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 (Effective Access)

21 The purported barriers provide effective access to Plaintiff. Even if the features
22 alleged in the Complaint did not comply with applicable access standards, the features
23 nonetheless provided effective access to Plaintiff because any alleged noncompliance was
24 de minimis, the features were usable and accessible despite their alleged noncompliance,
25 and/or Plaintiff was able to use and access the features.

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SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff is estopped by his conduct from recovering any relief under the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Although Defendant denies Plaintiff has been damaged in any way, if it should be determined that Plaintiff has been damaged, then Defendant alleges, based on information and belief, that Plaintiff has failed to mitigate purported damages and further allege, to the extent to which any damages could have been mitigated, such sums should be deducted from any award of damages. Cal. Civ. Code §§ 55.3, et seq.; Moralez v. Whole Foods Market, Inc., et. Al., 2013 WL 3967639 (N.D.Cal.).

NINTH AFFIRMATIVE DEFENSE

(Removal of Architectural Barriers was not Readily Achievable)

Any allegedly wrongful acts or omissions performed by Defendant or its agents, if there were any, do not subject Defendant to liability because the removal of the alleged barriers identified in the Complaint was not readily achievable or easily accomplishable and/or able to be carried out without much difficulty or expense when taking into account the factors set forth at 42 U.S.C. section 12181

TENTH AFFIRMATIVE DEFENSE

(Moot)

Defendant alleges on information and belief that Plaintiff's claims are moot as all alleged barriers, if any exist, have been removed.

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1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 (Damage Claims Barred by Lack of Actual Harm or Injury)

3 Defendant alleges on information and belief that Plaintiff is not entitled to an award of
4 statutory damages because Plaintiff was not actually personally deterred, impeded, or
5 deprived of equal access to Defendant's property/business while seeking Defendant's goods
6 or services as alleged in the Complaint; and if Plaintiff presented himself at the subject facility
7 as alleged in the Complaint, he did so for the specific purpose of looking for discriminatory
8 access barriers rather than to avail himself of the goods and services offered by Defendant,
9 thereby precluding Plaintiff under California law from obtaining the statutory damages he has
10 requested in his Complaint.

11 **TWELFTH AFFIRMATIVE DEFENSE**

12 (No Damages)

13 Defendant is informed and believe and based thereon allege that Plaintiff has not
14 suffered any damage as a result of any actions taken by Defendant.

15 **THIRTEENTH AFFIRMATIVE DEFENSE**

16 (Reasonable Portion of Facility Accessible)

17 Defendant is informed and believe and thereon alleges that the facility does not violate
18 any codes, laws, regulations, or provisions alleged in Plaintiff's Complaint by reason that a
19 reasonable portion of the facility and accommodations normally sought and used by the
20 public are accessible to and useable by Plaintiff and other persons with disabilities.

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 (Good Faith)

23 Defendant and their agents, if any, acted reasonably and in good faith at all times
24 material herein, based on all relevant facts, law, and circumstances known by them at the
25 time that they acted. Accordingly, Plaintiff is barred, in whole or in part, from any recovery in
26 this action.

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FIFTEENTH AFFIRMATIVE DEFENSE

(Equivalent Facilitation)

Any allegedly wrongful acts or omissions performed by Defendant or their agents, if there were any, do not subject Defendant to liability because Defendant provided equivalent facilitation with respect to the barriers alleged in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

(Dimensional Tolerances)

Plaintiff's claims are barred because the features identified in the Complaint substantially comply with the applicable law and are within dimensional tolerances.

PRAYER

WHEREFORE, this answering Defendant prays judgment as follows:

1. That Plaintiff takes nothing by way of this Complaint;
2. That Judgment be rendered in favor of Defendant against Plaintiff and the Complaint be dismissed with prejudice;
3. That Defendant be awarded attorney's fees and costs of suit incurred in defense of this action;
4. For such other and further relief as the Court may deem just and proper.

Dated: May 5, 2025

Respectfully submitted,
VAUGHAN & ASSOCIATES LAW OFFICE, APC

/s/ Cris C. Vaughan
Cris C. Vaughan
Attorney for Defendant, BRE Westgate Property Owner
LLC

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DEMAND FOR JURY

This answering Defendant demands a jury pursuant to Federal Rules of Civil Procedure 38(b) on all issues raised in the Complaint of Plaintiff, Ahmed Al-kubaisi.

Dated: May 5, 2025

VAUGHAN & ASSOCIATES LAW OFFICE, APC

/s/ Cris C. Vaughan

Cris C. Vaughan

Attorney for Defendant, BRE Westgate Property Owner
LLC